

REMARKS

Claims 1-10, 12-37, 39-48, and 52-73 and 75-107 are pending in this application, with claims 1, 39 and 75 being the only independent claims. Dependent claims 38, 74 and 108 have been canceled. Independent claims 1, 39 and 75 have been amended to incorporate the subject matter of canceled dependent claims 38, 74 and 108, respectively. Additional support for the amendments may be found, for example, at pg. 21, lines 3-5 of the specification as originally filed. No new matter has been added. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

Claims 1-10, 12-48 and 52-108 stand rejected under 35 U.S.C. §101 as directed to non-statutory subject matter.

According to the Examiner, “applicant’s method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 1-10, 12-48 and 52-108 are non-statutory since they may be performed within the human mind”.

Applicants disagree that the claims are directed to non-statutory subject matter which may be performed within the human mind. Independent claims 1, 39 and 75 each recite the step of “receiving in the exchange system a service request from a buyer...”. The method is therefore tied to a particular machine: the exchange system. *In re Bilski* specifically requires a particular machine and the exchange system qualifies as such. In any event, applicants have amended independent claims 1, 39 and 75 to further clarify that the claimed method is tied to the exchange system. Reconsideration and withdrawal of the rejection is therefore in order.

Claims 1-10, 12-48 and 52-108 stand rejected under 35 U.S.C. §102(a) as unpatentable over U.S. Patent No. 6,269,157 (“*Coyle*”) in view of U.S. Patent No. 5,826,244 (“*Huberman*”). For the following reasons, reconsideration and withdrawal of these rejections are requested.

Independent claim 1 has been amended to incorporate the subject matter of dependent claim 38 (now canceled). Thus, independent claim 1 now recites, *inter alia*, the step of “tracking bandwidth utilization for the selected supplier to ensure that the selected supplier does not provide further incentive data for data services beyond available bandwidth of the selected supplier”. Independent claims 39 and 75 have been amended to respectively incorporate the subject matter of dependent claims 74 and 87 (now also canceled) and, thus, correspondingly recite the tracking step of now amended independent claim 1. Additional support for the amendments may be found, for example, at pg. 21, lines 3-5 of the specification as originally filed. No new matter has been added. The combination of *Coyle* and *Huberman* fails to teach or suggest the tracking step of now-amended independent claims 1, 39 and 75.

The Examiner (at pg. 4 of the Office Action) asserts that:

Coyle ... discloses tracking bandwidth utilization for the supplier to ensure that the supplier does not provide incentive data for data services beyond the supplier available bandwidth (column 27, lines 10-15).

Applicants do not agree that the combination of *Coyle* and *Huberman* achieves the claimed invention because *Coyle* and *Huberman* fails to teach or suggest the claimed tracking step of now-amended independent claims 1, 39 and 75.

Coyle (col. 26, line 61 to col. 27, line 20; FIGS. 25 and 26) teaches a system for performing a forward delivery transaction process. In particular, *Coyle* (col. 26, lines 63-67) explains that a buyer formulates a request for future telecommunications service (RFS) and that

the buyer's computer 135 transmits this RFS to a moderator 137 over a data link or other telecommunications facility 136.

Coyle (col. 26, line 67 to col. 27, line 3) additionally teaches that the buyer enters information describing the RFS on a software-derived template to provide the moderator with sufficient information to process the RFS. According to *Coyle*, "[t]his template may reside ... on a computer bulletin board or website maintained by [the] Moderator (or a computer adjunct to the Moderator) and accessible to Buyer" (see col. 27, lines 5-8).

Coyle (col. 27, line 9-20) explains that "[t]he software-derived template may also call for such things as: (i) the relevant future period for which service is being requested (e.g., one or more specific hours, days, weeks or months, or any combination thereof), (ii) the bandwidth capacity required (e.g., 56 kb, T-1, T-3, etc.) ... and/or (v) any other elements necessary to provide prospective Carriers with a precise description of the future telecommunications service the Buyer is requesting and the specific interconnection criteria and location (or locations) required by Buyer". However, the information that is provided in the software-derived template of *Coyle* is obtained pursuant to a buyer providing his parameters of his RFS. The teachings of *Coyle* have nothing to do with tracking bandwidth utilization for the selected supplier to ensure that the selected supplier does not provide further incentive data for data services beyond available bandwidth of the selected supplier, as recited in now amended independent claims 1, 39 and 75. *Coyle* thus fails to teach or suggest now-amended independent claims 1, 39 and 75.

The combination of *Coyle* and *Huberman* fails to achieve the method of auctioning data services of now amended independent claims 1, 39 and 75, because *Huberman* also fails to teach or suggest the tracking step of independent claims 1, 39 and 75.

Huberman relates to “a system and method that enable and facilitate an electronically networked, highly automated, brokered auction in a domain ... namely, the document services industry” (see col. 2, lines 54-58). *Huberman* (col. 2, line 65 to col. 3, line 14) explains that “a plurality of processes are executed, including a customer process representing a customer, a supplier process representing a supplier, and a broker process capable of serving as an intermediary between the customer and supplier processes. The broker process is provided with a description of a document service. Responsively to the description thus provided, an auction for the document service is conducted, as follows: A customer or supplier process submits a bid for the document service. The broker process receives bidding information including the submitted bid. The broker process attempts to establish a price for the document service responsively to the received bidding information and, if a price can be established, establishes the price. If a price is established, the broker process proposes a transaction wherein the document service is to be provided at the established price. If the proposed transaction is accepted, the transaction can proceed automatically”.

There is nothing whatsoever in *Huberman* about the step of “tracking bandwidth utilization for the selected supplier to ensure that the selected supplier does not provide further incentive data for data services beyond available bandwidth of the selected supplier” as recited in now amended independent claims 1, 39 and 75. *Huberman* fails to provide this claimed tracking step.

The combination of *Coyle* and *Huberman* thus fails to teach or suggest applicants’ claimed method of auctioning data services, because *Huberman* fails to provide what *Coyle* lacks. Applicants accordingly assert that independent claims 1, 39 and 75 are therefore patentably distinct over the combination of *Coyle* and *Huberman*.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) are therefore in order, and a notice to that effect is respectfully requested.

In view of the patentability of independent claims 1, 39 and 75, dependent claims 2-37, 40-48, 51-73, and 76-107 are also patentable over the prior art for the reasons set forth above, as well as for the additional recitations contained therein.

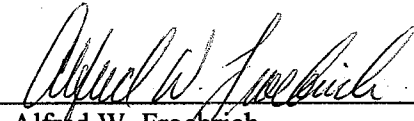
Based on the foregoing remarks, this application is in condition for allowance. Early passage of this case to issue is respectfully requested.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted
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Dated: April 28, 2009

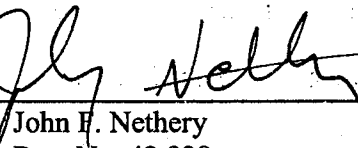
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